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OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 7,702,125 : DECISION ON REQUEST
Levy, et al. : FOR
Issue Date: April 20, 2010 : RECONSIDERATION OF
Application No. 10/774,312 : PATENT TERM ADJUSTMENT
Filed: February 5, 2004 :
Atty. Docket No. **P0930** :

This is a decision on the petition filed on September 27, 2010, which is being treated as a renewed petition under 37 CFR 1.705(d).

This renewed petition is **DISMISSED**.

An original petition was submitted on May 12, 2010. The original petition was treated as a petition under 37 CFR 1.705(d), and a decision was mailed on August 27, 2010, which granted the petition to the extent that the patent term adjustment was corrected to indicate that the term of the above-identified patent will be extended or adjusted by one thousand, six hundred and seventeen (1,617) days.

Patentees now file this renewed petition and assert that it is improper for the USPTO to exclude from the "B" delay adjustment under 35 U.S.C. 154(b)(1)(B) the period from the filing of a Notice of Appeal to either the filing of a Request for Continued Examination, Office action under 35 USC 132 or Notice of Allowance, or a decision by the Board of Patent Appeals and Interferences appellate review period that was excluded from the "B".

Pursuant to 35 U.S.C. § 154(B)(ii), the Office is required to reduce the three-year application pendency guarantee by "any time consumed by appellate review by the Board of Patent Appeals and Interferences." As such, the Office is required to reduce any accorded "B" delay by the entire 402 days which were consumed by Appellate review.

It follows that the decision to extend or adjust the patent term adjustment by one thousand, six hundred and seventeen (1,617) days is in accordance with Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010), as interpreted by the United States Court of Appeals for the Federal Circuit.

Contrary to patentees' assertion, it is further noted that there is no period of adjustment for "C" delay because there was no successful appeal in which the Board of Patent Appeals and Interferences reversed the examiner as to any previously rejected claim.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand, six hundred and seventeen (1,617) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,702,125 B2

DATED : Apr. 20, 2010

INVENTOR(S) : Levy, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1619) days

Delete the phrase "by 1619 days" and insert – by 1617 days--